

REFERENCES IN TEXT

The date of enactment of the SAFETEA-LU, referred to in subsec. (a)(1)(B), is the date of enactment of Pub. L. 109-59, which was approved Aug. 10, 2005.

PRIOR PROVISIONS

A prior section 325, added Pub. L. 102-240, title VI, § 6003[(a)], Dec. 18, 1991, 105 Stat. 2168, related to international highway transportation outreach program, prior to repeal by Pub. L. 105-178, title V, § 5119(b), June 9, 1998, 112 Stat. 452.

§ 326. State assumption of responsibility for categorical exclusions

(a) CATEGORICAL EXCLUSION DETERMINATIONS.—

(1) IN GENERAL.—The Secretary may assign, and a State may assume, responsibility for determining whether certain designated activities are included within classes of action identified in regulation by the Secretary that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations promulgated by the Council on Environmental Quality under part 1500 of title 40, Code of Federal Regulations (as in effect on October 1, 2003).

(2) SCOPE OF AUTHORITY.—A determination described in paragraph (1) shall be made by a State in accordance with criteria established by the Secretary and only for types of activities specifically designated by the Secretary.

(3) CRITERIA.—The criteria under paragraph (2) shall include provisions for public availability of information consistent with section 552 of title 5 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) OTHER APPLICABLE FEDERAL LAWS.—

(1) IN GENERAL.—If a State assumes responsibility under subsection (a), the Secretary may also assign and the State may assume all or part of the responsibilities of the Secretary for environmental review, consultation, or other related actions required under any Federal law applicable to activities that are classified by the Secretary as categorical exclusions, with the exception of government-to-government consultation with Indian tribes, subject to the same procedural and substantive requirements as would be required if that responsibility were carried out by the Secretary.

(2) SOLE RESPONSIBILITY.—A State that assumes responsibility under paragraph (1) with respect to a Federal law shall be solely responsible and solely liable for complying with and carrying out that law, and the Secretary shall have no such responsibility or liability.

(c) MEMORANDA OF UNDERSTANDING.—

(1) IN GENERAL.—The Secretary and the State, after providing public notice and opportunity for comment, shall enter into a memorandum of understanding setting forth the responsibilities to be assigned under this section and the terms and conditions under which the assignments are made, including establishment of the circumstances under which the Secretary would reassume responsibility for categorical exclusion determinations.

(2) TERM.—A memorandum of understanding—

(A) shall have a term of not more than 3 years; and

(B) shall be renewable.

(3) ACCEPTANCE OF JURISDICTION.—In a memorandum of understanding, the State shall consent to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary that the State assumes.

(4) MONITORING.—The Secretary shall—

(A) monitor compliance by the State with the memorandum of understanding and the provision by the State of financial resources to carry out the memorandum of understanding; and

(B) take into account the performance by the State when considering renewal of the memorandum of understanding.

(d) TERMINATION.—The Secretary may terminate any assumption of responsibility under a memorandum of understanding on a determination that the State is not adequately carrying out the responsibilities assigned to the State.

(e) STATE AGENCY DEEMED TO BE FEDERAL AGENCY.—A State agency that is assigned a responsibility under a memorandum of understanding shall be deemed to be a Federal agency for the purposes of the Federal law under which the responsibility is exercised.

(Added Pub. L. 109-59, title VI, § 6004(a), Aug. 10, 2005, 119 Stat. 1867.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a)(3), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 326, added Pub. L. 102-240, title VI, § 6004(a), Dec. 18, 1991, 105 Stat. 2169; amended Pub. L. 105-130, § 5(e)(4), Dec. 1, 1997, 111 Stat. 2558, related to education and training program, prior to repeal by Pub. L. 105-178, title V, § 5119(b), June 9, 1998, 112 Stat. 452.

§ 327. Surface transportation project delivery pilot program

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall carry out a surface transportation project delivery pilot program (referred to in this section as the “program”).

(2) ASSUMPTION OF RESPONSIBILITY.—

(A) IN GENERAL.—Subject to the other provisions of this section, with the written agreement of the Secretary and a State, which may be in the form of a memorandum of understanding, the Secretary may assign, and the State may assume, the responsibilities of the Secretary with respect to one or more highway projects within the State under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ADDITIONAL RESPONSIBILITY.—If a State assumes responsibility under subparagraph (A)—

(i) the Secretary may assign to the State, and the State may assume, all or